HON'BLE SHRI G.S.SINGHVI, THE CHIEF JUSTICE

W.P.No.28847 of 1998

Between

N.Suryanarayana ..petitioner

AND

The Member Secretary, A.P.S.E.B., Hyderabad and others ..Respondents

:: JUDGMENT ::

Counsel for the petitioner	Sri K.Jaya Kumar for Sri P.Srinivasulu
Counsel for respondents	Sri Samineni Kishore

19.12.2006

Per G.S.Singhvi, CJ

Whether successful completion of apprenticeship training by the petitioner created a vested right in him to be appointed in the service of the Andhra Padesh State Electricity Board (for short, 'the Board') is the question which arises for determination in this petition filed by N.Suryanarayana for issue of a mandamus to the respondents to consider and appoint him as Wireman/Helper or any other suitable post.

In furtherance of Memo No.PO/Adm/S.3/2187 dated 22.8.1996 issued by Superintending Engineer (Operation), Anantapur (respondent No.2), the petitioner joined apprenticeship training for a period of two years in the trade of Wireman and successfully completed the same. Thereafter, he applied for appointment in the services of the Board, but could not persuade the concerned authority to entertain his claim. In the affidavit filed by him, the petitioner has relied on the judgment of the Division Bench of this Court in **K.Venkateshwarlu v. A.P. Electricity Board**[1] and pleaded that in terms of that judgment, he is entitled for preferential treatment in the matter of recruitment in the service of the Board and that even though a number of posts of Wireman and Helper are available, the respondents have not appointed him. He has further averred that a large number of backdoor entrants have been absorbed in the regular establishment of the Board, but his case has not been considered despite the fact that he fulfils the qualifications prescribed for the post of Wireman/Helper. In support of his claim, the petitioner has relied on the judgment of the Supreme Court in **UPSRTC v. Parivahan N.S.B. Sangh**[2].

Sri K.Jaya Kumar, learned counsel for the petitioner heavily relied on the directions given by the Division Bench in

Venkateshwarlu's case (supra) and order dated 4.9.1997 passed in Contempt Case No.326 of 1997 in **K.Venkateswarlu and 3 others vs. A.K.Kutty and 4 others** and argued that notwithstanding the unequivocal statement contained in Memo dated 22.8.1996 that the Board shall not be obliged to offer appointment to his client on successful completion of apprenticeship training, the concerned authority should have appointed him as Wireman/ Helper or on any other suitable post. Learned counsel emphasised that the respondents have appointed large number of persons who did not undergo apprenticeship training, but the candidature of his client has not been considered and, in this manner, he had been discriminated.

Sri Samineni Kishore, learned counsel for the Board argued that successful completion of training of apprenticeship does not entitle the petitioner to claim appointment as of right and, therefore, a writ of mandamus cannot be issued for his appointment on the post of Wireman or Helper.

I have considered the respective submissions. In my opinion, the petitioner has failed to make out a case for issue of a mandamus for his appointment to the post of Wireman or Helper or any other suitable post in the services of the Board and the writ petition is liable to be dismissed for more than one reason, which are enumerated below:

1) The petitioner has not impleaded the Board as party- respondent. The Member Secretary, The Superintending Engineer (Operation), Anantapur and the Divisional Engineer (Operation), Anantapur who have been impleaded as parties to the writ petition are functionaries and officers of the Board and not the Board itself, which was established under Section 5 of the Indian Electricity (Supply) Act, 1948. The non-impleadment of the Board as party respondent is fatal to the maintainability of the petitioner's claim for

issue of a mandamus for his appointment in the service of the Board. It needs no emphasis that when a person seeks a direction from the Court, the implementation of which results in imposition of financial burden on the State or any statutory authority, then the writ petition filed by such person cannot be entertained unless, the State or such statutory authority is impleaded as party respondent. (see **Ranjeet Mal vs. General Manager, Northern Railway**[3]**).**

2) Section 22 (2) of the Apprentices Act, 1961 clearly lays down that successful completion of training by the apprentice does not create a right in his favour to be appointed on a particular post and the employee is not obliged to offer appointment to such trainee. In view of this provision, the Court cannot issue a direction to the respondents to appoint the petitioner on the post of Wireman or Helper or any other suitable post.

3) The affidavit filed by the petitioner does not show that after completion of apprenticeship training by him, the Board had made any recruitment on the post of Wireman or Helper and his candidature was not considered despite the fact that he had applied for the same. In **UPSRTC v. Parivahan N.S.B. Sangh** (supra), the Supreme Court considered the provisions of the Apprentices Act and observed that the provisions of the Act were sufficiently indicative of the facts that the training imparted to be desired to be result oriented and the trainees are treated as akin to employees. The Supreme Court further observed that it would be a national waste if the services of the apprentices were not availed. After making these observations, the Supreme Court gave the following guidelines to be kept in mind while dealing with the claims of trainees to get employment after successful completion of their training:

1) Other things being equal, a trained apprentice should be given preference over direct recruits;
2) For this a Trainee would not be required to get his name sponsored by any employment exchange. The decision of this Court in **Union of India v. Hargopal** (**AIR 1987 SC 1227**) would permit this.
3) If age bar would come in the way of the trainee, the same would be relaxed in accordance with what is stated in this regard, if any, in the concerned service rule. If the service rule be silent on this aspect, relaxations to the extent of the period for which the apprentice had undergone training would be given.

These guidelines cannot be read as casting a duty on the Board to appoint the petitioner despite the fact that he has not faced any selection. In **U.P. Rajya Vidyut Parishad Apprentice Welfare Assocn. V. State of U.P.**[4], a two Judges Bench of the Supreme Court considered the earlier judgment and distinguished the same. Paragraphs 3 and 4 of the later judgment, which are relevant to the subject matter of this petition, are extracted below:

"3. A question had arisen before the Allahabad High Court in a later case as to whether the direction that the trainees need not undertake examination was applicable only to the petitioners in the case before this Court or whether para 13 laid down any general principle that apprentices need not take the examination. This question went before a Full Bench of the Allahabad High Court in **Arvind Gautam v. State of U.P. (Civil Misc. Writ Petition No. 23076 of 1998), reported in (1999) 2 UPLBEC 1397**. The Full Bench held that what was mentioned in para 13 was in the specific factual background of the "cases on hand" and that the apprentices are to go through the examination as also the interview, as provided in the Recruitment Rules. The Full Bench had also approved the judgment in the case of **Manoj Kumar Mishra v. State of U.P., reported in (1997) 2 UPLBEC 1374**, which took a similar view in regard to the interpretation of para 13 of the judgment of this

Court mentioned above.

4. We are, therefore, of the opinion that the view taken in **Manoj Kumar Mishra**'s case as also the view taken by the Full Bench i n **Arvind Gautam**'s case (supra), is a correct one and that apprentices have to go through the procedure of examination/interview and that they are, however, entitled to the benefits of entries (i) to (iv) laid down in **U.P. State Road Transport Corporation** case, **(1995) 2 SCC 1 : 1995 AIR SCW 1145 : AIR 1995 SC 1115 : 1995 Lab IC 1361 : (1995 All LJ 767)**."

4) The petitioner's assertion that number of persons, who were appointed by backdoor method, have been regularly appointed is devoid of basic particulars. He has not given the name of any person who got entry in the service of the Board by backdoor method and who was appointed on regular basis. He has not given the date of the order by which such backdoor entrant entered the service of the Board. The order of appointment of backdoor entrant has not been placed on record so as to enable the respondents to controvert the allegation in which the violation of Articles 14 and 16 is implicit.

5) The judgment of the Division Bench on which reliance has been placed by the petitioner does not, in any manner, help his cause because what the Division Bench had directed is nothing except that a person who successfully completed apprenticeship training should be given preference in the matter of recruitment and the provision contained in Section 4 of the Andhra Pradesh (Regulation of Appointment to Public Services and Rationalisation of Staff Pattern and Pay Structure) Act, 1994, which confines consideration of persons sponsored by the employment exchange only, cannot be applied to those who successfully complete apprenticeship training. The judgment of the Supreme Court in

UPSRTC v. Parivahan N.S.B. Sangh (supra) has been distinguished in **U.P. Rajya Vidyut Parishad Apprentice Welfare Assocn v. State of U.P.** (supra). Therefore, the same cannot be made basis for issue of a mandamus to the respondents to appoint the petitioner despite the fact that he is not shown to have appeared in any selection.

In the result, the writ petition is dismissed.

As a sequel to dismissal of the writ petition, W.P.M.P.No.35212 of 1998 filed by the petitioner for interim relief is also dismissed.

G.S.SINGHVI, CJ

19-12-2006
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[1] 1996 (3) ALD 843
[2] AIR 1995 SC 1115
[3] AIR 1977 SC 1701
[4] AIR 2000 SC 2621